IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of the Case.

Civil Misc. W.P. No. 558(M/S) of 2004

Date of decision :- 23.11.2004

AFR the (Approval of:-

Hon'ble Mr. Justice Irshad Hussain

Hon'ble Mr. Justice J.C.S. Rawat

- Whether the order/judgment should be sent to the reporters for reporting?

- Whether the reporters be allowed to see the judgment?

Date:- 23.11.2004

LSR

In the High Court of Uttarakhand, at Nainital.

Civil Misc. Writ Petition No. 558(M/S) of 2004

Himalaya Stone Industry and others …. Petitioners.

Vs.

State of Uttaranchal and others ….. Respondents.

Mr. Bharatjee Aggarwal Senior Advocate,
Assisted by Sri S.K. Posti learned counsel
for the petitioners.
Mr. K.P. Upadhyaya learned Brief Holder
for the State.

Dated: 23rd November, 2004

Coram: Hon'ble Irshad Hussain, J.
Hon'ble J.C.S. Rawat, J.

Per: (Hon'ble J.C.S. Rawat, J.)

This petition has been filed for quashing the condition/restriction placed in the notification dated 16-2-2004 issued under Section 3-A(1) of the Trade Tax Act, 1948 (hereinafter referred to as the 'Act') which provides for levy of tax on stone grit/gitti at the point of sale by the stone crushers to the consumers; for a direction in the nature of mandamus or prohibition restraining the respondent from realizing the tax from the petitioners on the sale of the gittis/stone grits prepared out of the tax paid stone boulders purchased from Uttaranchal Van Vikas Nigam and Uttaranchal Forest Department and for a direction to refund the entire tax realized from the petitioners in pursuance to the condition of the said notification.

2- The petitioners are purchasing stone boulders from Uttaranchal Van Vikas Nigam and Uttaranchal Forest Department and they are paying tax at the rate of 8%. The petitioners are crushing the stone boulders into stone grits and gittis and are selling it to dealers and consumers. The Government of Uttaranchal issued notification dated 16-2-2004 (Annexure-2 to the writ petition) and the goods notified have been made taxable at the point of sale to the consumers.

However a condition has been placed that if the goods are sold by the dealer to the stone crushers, then tax shall be realized at the point of sale by the stone crushers and further that if tax has been paid by the dealer on the purchases made by the stone crushers then amount shall be refunded or adjusted to the dealer in accordance with Section 29-A of the 'Act'.

3- The scheme of taxation under U.P. Trade Tax Act is a single point taxation scheme, hence only one point of sale has been made taxable and as such the notification dated 16-2-2004 is, in so far as it provides for imposition of tax at the point of sale by the dealer to the consumer, in accordance with the provisions of Section 3-A(1)(b) of the 'Act'. However the said section does not authorize the State Government to issue a notification imposing a condition as placed in the said notification dated 16-2-2004 and referred above. The petitioners, therefore, urge that since the tax has been paid by them to the selling dealers namely Uttaranchal Van Vikas Nigam and Uttaranchal Forest Department at the time of purchase of stone boulders and the tax having been deposited by the selling dealers with the Trade Tax Department no tax is payable by them on the sale of gittis/stone grits obtained by crushing the stone boulders.

4- The respondent-State contested the petition, inter alia, on the grounds that there is no bar under Section 3-A(1) of the 'Act' on the Government to impose conditions and restrictions in the notification issued under this Section; that the State Government can impose tax differently on different class of goods as in the notification dated 16-2-2004 the point of tax in two different situations i.e. in the case of sale by a dealer and in the case of sale by a stone crusher has been mentioned; that the notification clearly provide that where sale is made by any dealer to the stone crusher the tax will be levied on the sale by the stone crusher and it has further been provided that the dealer selling such goods to the crusher shall be entitled to refund of tax paid by him on purchase of such goods; that from 16-2-2004 there is no tax liability on Van Vikas Nigam of the

Forest Department on their sale of stone boulders to the petitioners/crushers; that by the notification dated 16-2-2004 the general point to tax has been maintained at the point of sale to the consumer but a specific provision that where such items are sole by any dealer to the crusher, the tax will be levied at the point of sale by such crusher has been introduced; that since the price of gittis/stone grits sold by the crushers is 4 to 5 times higher than the purchase price of the stone boulders therefore with a view to realize tax on the sale price of gittis/stone grits etc in order to augment the revenue of the State the specific provision has been introduced in the notification and that the State Government was legally authorized to place the condition accordingly in the notification dated 16-2-2004.

5- Sri Bharatji Agrawal, learned Senior Counsel appearing on behalf of the petitioners argued that in exercise of the delegated power the State Government can not go beyond Section 3-A (1)(b) of the 'Act' by providing two different point of sale in respect of same goods namely stone boulders which shall include stone gittis etc. He further urged that Section 3-A(A)(b) of the 'Act' does not authorize the State Government to issue notification subject to any condition or restrictions unlike other provisions of the 'Act' where power has been given to the State Government to issue a notification subject to such condition as may be specified in the notification. The learned Brief Holder on behalf of the State refuted the contentions raised on behalf of the petitioners, while reiterating the propriety of the stand taken in the counter affidavit.

6- To appreciate the submissions made on behalf of the parties it is necessary to reproduce the relevant provision of Section 3-A(1) of the 'Act', which provides as under:-

"(1) Except as provided in Section 3-D, the tax payable by a dealer under this Act shall be levied:-

(a) On the turnover in respect of 'declared goods', at the point of sale to the consumer at the maximum rate for the time being specified in Section 15 notification of the Central Sales Tax Act, 1956 or where the State

Government, by notification declares any other single point or a lesser rate;

(b) On the turnover in respect of such goods, other than those referred to in clause (a), at such point and at such rate, not exceeding fifty per cent, as the State Government may, by notification declare, and different points and different rates may be declared in respect of different goods;

(c) On the turnover in respect of goods, other than those referred to in clause (b), at the point of sale by manufacturer or importer at the rate of ten per cent."

7- Perusal of the record reveal that the notification dated 16-2-2004 was issued under Section 3-A(1)(b) of the 'Act'. In the notification goods have been notified in column no. 2 and the points of sale have also been notified for the taxability of the said goods namely at the point of sale to consumer by the dealer in column no.3 and the rate of the tax i.e. 8% in column no.4. The same is in accordance with the provision referred above as the State Government can issue notification to levy the tax at one point of sale for the same goods. However under the said provision the State Government has no power while issuing the notification to put any condition by providing different point of sale in respect of same goods.

8- The question which now arises for consideration is as to whether the stone gittis etc obtained by crushing stone boulders continues to be the stone and are not different goods. The contention of the petitioners is that converting stone boulders into stone gittis etc does not involve any manufacturing process within the meaning of the provisions of the 'Act'. On the other hand the stand of the State Government is that the process adopted by the stone crushers in converting the stone boulders into stone gittis etc amount to manufacturing as per the definition of 'manufacture' under Section 2 (e-1) of the 'Act'. This Section defines the term 'manufacture' as under:-

> ‘Manufacture’ means producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods, but does not include such manufactures or manufacturing processes as may be prescribed.’

9- From the perusal of the above definition of the ‘manufacture’ it is evident that the process of producing, making, ornamenting, altering and finishing or otherwise processing, treating or adapting any goods fall within the meaning of ‘manufacture’. Every type of variation of goods would not amount to manufacture, unless it results in emergence of a new commercial commodity. In the case in hand, no new commercial commodity comes into existence after crushing the stone boulders. The Apex Court in the case of **Commissioner of Sales Tax, U.P. vs. Lalkuwan Stone Crusher, 2000 (3) S.C.C. 525** held that when stone boulders were crushed into stone chips, gittis and stone blast the process would not amount to ‘manufacture’. Observing that the stone, as such, and gittis and articles of stone are all of similar nature though by size they may be different, the Court also held that the term ‘stone’ is wide enough to include the various forms such as gittis, chips, stone ballast. Hence the State Government in exercise of its delegated power can not provide different point of sale in respect of the same goods because the State Government has only power to provide different point of sale in respect of different goods and not for the same goods. The impugned condition placed in the notification dated 16-2-2004 however provide two different point of sale in respect of the same goods which is not permissible under Section 3-A(1)(b) of the ‘Act’.

10- It is settled principle of law that the authority vested with the powers to issue notification can act within the limits of its powers and can not transgress the same. According to Section 3-A(1(b) of the ‘Act’ which empowers the authority to issue notification, the notification would have to conform to the provisions of the Section. If a particular notification would not

to fall within the ambit and purview of the Section, the Government in such event would not have power to issue such notification.

11- It also need to be mentioned that in **Hukum Chandra Vs. Union of India and others (AIR 1972 S.C. 2427)** the Apex Court laid stress on the principle and that the initial difference between the subordinate legislation and the Statute laws lies in the fact that a subordinate law making body is bound by the terms of its delegated or derives authority and that Court of law, as a general rule will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to the validity of rules have been fulfilled. The same view has been reiterated in the cases of **Assam Company Ltd. and another vs. State of Assam (2001 UOTC 751) and Additional District Magistrate vs. Delhi Administration (AIR 2000 SC 2143).**

12- In view of the above proposition of law the subordinate and the delegated legislation can not travel beyond the scope of enabling provision of the 'Act'. The State Government under Section 3-A (1)(b) of the 'Act' can not issue notification providing different point of sale in respect of the same goods. As such the condition regarding point of sale of the stone crushers when the goods were already sold by the dealers to the stone crushers is clearly repugnant and beyond the scope of Section 3-A(1)(b) of the 'Act' in as much as the point of sale having been notified for the same goods as the point of sale to the consumers. The impugned condition travels beyond the scope of delegated power in the section.

13- It has been submitted on behalf of State that the intention of the State Government was to levy tax on the goods at the stage of their sale by the dealers to the ultimate consumers. The submission has no force because Section 3-AAA of the 'Act' provide that every sale by a dealer even to a registered dealer shall be deemed as sale to the consumer, if it does not purchase them for re-sale in the same form and condition in which he has purchased and for that purpose he furnishes the declaration in

form III-A to the assessing authority. Thus Section 3-AAA categorically provides that every sale by a dealer to a registered dealer or any other person shall be deemed to be a sale to the consumer. Thus the submission of the State is completely inconsistent to the provisions of Section 3-AAA of the 'Act'.

14- Section 3-A(1)(b) of the 'Act' only empowers State Government to issue notification in consonance with the provisions of the 'Act' and it does not provide that the Stage Government may issue notification subject to any condition or restriction.. The power to issue notification beyond the scope of the section has not been conferred by the enabling provision in the 'Act'. The provisions of Section 4-AA, 4-AAA, 4-BB, 4-CC and Section 5 of the of the 'Act' specifically provide that the State Government has the power to issue notification subject to any condition and restriction as may be specific in the notification but such power has not been conferred under Section 3-A(1) of the 'Act'.

15- The learned State Counsel has relied upon the decision of Hon'ble Supreme Court in the case of **Heera Lal Ratan Chandra vs. Sales Tax Officer [1973 (31) S.T.C. 178]** in which the main controversy was as to whether the State Government was competent to levy sale tax on the purchases on processed food grain and Dal under the Act as amended under U.P. Sales Tax (Amendment and Validation) Act, 1970. The amended Act was itself under challenge the Legislative Competency was also challenged before the Apex Court. But in the present case no challenge has been made with regard to Legislative Competency of the Legislature. It was conceded by the learned Senior Counsel for the petitioners that the State Government is competent to impose such condition by Legislation. In the case in hand the impugned notification has been challenged and it has been held that the impugned condition travels beyond the scope of the enabling Act. Thus the above decision is not applicable in the present case.

16- In view of the above discussion we are of the view that the condition placed in the notification dated 16-02-2004 that if

the sale is made to the stone crusher the point of sale on which the tax will be payable shall be the point of sale by the stone crusher and if the dealer has deposited the tax on the purchase of the goods by the stone crushers then such amount is liable to be adjusted/refunded in accordance with the Section 29-A of the 'Act', is beyond the scope of Section 3-A (1)(b) of the 'Act'.

17- The writ petition is allowed. the condition imposed in the notification dated 16-02-2004 is quashed. If any tax had been realized in pursuance of the said condition of the notification, the same shall be refunded to the petitioners, at the earliest. No order as to costs.

(J.C.S. Rawat,J.) **(Irshad Hussain, J.)**